

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

CALLY RUST  
*Plaintiff,*

vs.

EMERALD SURF SCIENCES, LLC  
And RHEOVEST HR, LLC  
*Defendants.*

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Case No. 5:21-CV:00939

**DEFENDANTS EMERALD SURF SCIENCES, LLC  
and RHEOVEST HR, LLC's NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, Defendants Emerald Surf Sciences, LLC and Rheovest HR, LLC (“Defendants”) hereby file this notice to remove the above-captioned action from the District Court for the 81<sup>st</sup>/218<sup>th</sup> Judicial District in Atascosa County, Texas, to the United States District Court for the Western District of Texas, San Antonio Division based on the existence of a federal question jurisdiction. Defendants respectfully show the Court as follows:

**I.  
BACKGROUND AND PROCEDURAL PREREQUISITES**

1. On August 18, 2021, Plaintiff Cally Rust (“Plaintiff”) initiated an action in the District Court for the 81<sup>st</sup>/218<sup>th</sup> Judicial District in Atascosa County, Texas, by filing a Petition captioned *Cally Rust v. Emerald Surf Sciences, LLC and Rheovest HR, LLC*, Case No. 21-08-0710-CVA (hereinafter, the “State Court Proceeding”). See Plaintiff’s Petition, attached hereto as Exhibit 1. Removal is proper to this federal district because the original

action occurred in Atascosa County, which falls within the San Antonio Division of this Court. *See* 28 U.S.C. § 116(c).

2. Defendant Emerald Surf Sciences, LLC was purportedly served with a copy of Plaintiff's Petition on September 7, 2021.<sup>1</sup> Defendant Rheovest HR, LLC was served with a copy of Plaintiff's Petition on September 9, 2021. Thus, this Notice of Removal is timely filed. 28 U.S.C. § 1446(b). *See* Returns of Service, attached hereto as Exhibits 2 and 3, respectfully. Both defendants consent to this removal.

3. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders in the State Court Proceeding, along with a copy of the State Court docket sheet, is attached hereto and incorporated herein by reference. *See* Plaintiff's Petition, Exhibit 1; Return of Service (Emerald Surf Sciences), Exhibit 2; Return of Service (Rheovest HR, LLC), Exhibit 3; State Court docket sheet, Exhibit 4.

4. As required by 28 U.S.C. § 1446(d), a Notice to State Court of Filing of Notice of Removal, together with a copy of this Notice of Removal, will promptly be filed with the 81<sup>st</sup>/218<sup>th</sup> District Court in Atascosa County, Texas, and served on Plaintiff's counsel.

5. Further, as required by Rule 7.1 of the Federal Rules of Civil Procedure, Defendants will file a separate "Corporate Disclosure Statement."

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<sup>1</sup> According to the court records, Plaintiff appears to have served Defendant Emerald Surf Sciences, LLC, through CT Corp. *See* Exhibit 2. However, CT Corp. is not the proper agent for service for Emerald Surf Sciences for matters brought in Texas. Nonetheless, for purposes of this removal, Defendant Emerald Surf Sciences, LLC references that notice of service.

**II.**  
**FEDERAL QUESTION JURISDICTION EXISTS**

6. In Plaintiff's Petition, she asserts four causes of action: (1) Wrongful Discharge and Retaliation under Tex. Labor Code §21.051; (2) Hostile Work Environment and Discrimination Based on Sex under Texas Law; (3) Violation of Title VII of the Civil Rights Act of 1964; and (4) Negligent Hiring, Training, Retention, and Supervision. *See generally* Petition, Exhibit 1.

7. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331 and is one that may be removed to this court by Defendant pursuant to provisions of 28 U.S.C. § 1441. Removal is appropriate because Plaintiff's Petition raises a federal question, specifically, sex discrimination under Title VII.

8. With respect to the causes of action that may be considered separate and independent from those arising under federal law, they are also removable under 28 U.S.C. § 1441. This Court has jurisdiction over Plaintiff's state law claim statutory and common law claims pursuant to the doctrine of supplemental jurisdiction under 28 U.S.C. § 1367(a) as they are so related to the federal claim as to form part of the same case or controversy under Article III of the U.S. Constitution. Thus, this action is removable in its entirety.

WHEREFORE, Defendants Emerald Surf Sciences, LLC and Rheovest HR, LLC effect removal of this action the District Court for the 81<sup>st</sup>/218<sup>th</sup> Judicial District in Atascosa County, Texas, to the United States District Court for the Western District of Texas, San Antonio Division.

Respectfully submitted,

/s/ Lara C. de Leon

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**COUNSEL FOR DEFENDANT**

### **CERTIFICATE OF SERVICE**

This is to certify that on the 4th day of October, 2021, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Michael L. Orth

Robert C. Hilliard

John B. Martinez

Michael B. Mathis

Aissa L. Barrera

Alexis A. Medina

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***Attorney for Plaintiff***

/s/ Lara C. de Leon